

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

LIONEL BURNS,

Plaintiff,

v.

Civ. No. 22-304 MV/GJF

ROBERT SHEPPERD, SHERIFF;
THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF LINCOLN; and RHONDA BURNS,

Defendants.

ORDER TO SHOW CAUSE

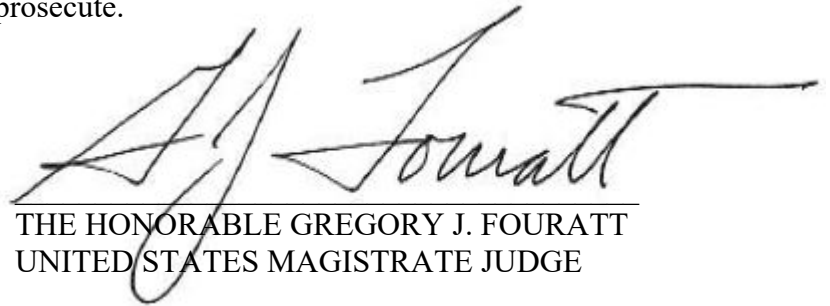
THIS MATTER comes before the Court *sua sponte*. Plaintiff initiated this action in state court on March 4, 2022. ECF 1-2. On April 22, 2022, Defendants Lincoln County Sheriff's Department ("Defendant Sheriff's Department") and Defendant Deputy Daniel Brawley ("Defendant Brawley") removed the case to federal court. ECF 1. The Notice of Removal alleged that both the Defendant Sheriff's Department and Defendant Brawley were served in May of 2022, but "[u]pon information and belief, Defendant Rhonda Burns ha[d] not been served." *Id.* ¶¶ 4-6. On July 5, 2022, Plaintiff filed an Amended Complaint, adding claims against Robert Shepperd ("Defendant Shepperd") and Board of County Commissioners for the County of Lincoln County ("Defendant County") and dismissing claims against Defendant Brawley. *See* ECF 16.

On July 19, 2022, Defendant Sheriff's Department moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). ECF 18. The presiding judge having now granted that motion, claims remain against only Defendant Burns, Defendant Shepperd, and Defendant County. *See* ECFs 16, 24. Yet, the docket does not reflect that Plaintiff has served any of these remaining defendants.

Federal Rule of Civil Procedure 4(m) requires a plaintiff to serve a defendant within ninety days of filing a complaint. In addition, Federal Rule of Civil Procedure 41(b) authorizes the Court

to dismiss an action *sua sponte* for failure to prosecute. *See Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003); *see also* D.N.M. LR-Civ. 41.1 (“A civil action may be dismissed if, for a period of ninety (90) calendar days, no steps are taken to move the case forward.”). More than ninety days have passed since Plaintiff filed his Amended Complaint and no steps have been taken to prosecute his claims against the Defendants who remain in this case.

IT IS THEREFORE ORDERED that **on or before May 15, 2024**, Plaintiff must show cause in writing why this case should not be dismissed without prejudice for failure to timely serve the remaining defendants and for failure to prosecute.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE